

The Honorable Mary Jo Heston
Chapter 7
Hearing Location: Tacoma Federal Courthouse
Union Station, Courtroom H, 1717 Pacific
Avenue, Ste 2100, Tacoma, WA 98402-3233
Hearing Date: October 8, 2019
Hearing Time: 9:00 a.m.
Response Date: October 1, 2019

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re:

Case No.: 19-42748-MJH

Whispering Pines TR

Chapter 7

Debtor

MOTION FOR RELIEF FROM STAY AND
MEMORANDUM IN SUPPORT THEREOF

COMES NOW, Nationstar Mortgage LLC d/b/a Mr. Cooper (“Creditor”) and moves the Court pursuant to 11 USC §362(d) for an Order Terminating the Automatic Stay, allowing Creditor to proceed with any and all contractual and statutory remedies incident to the interest held by virtue of the note and deed of trust described below and attached as exhibits to this motion and memorandum.

I. RELEVANT FACTS

A. The Property

On or about April 13, 2007, Sarah M. Erickson (“Borrower”) executed a note in favor of Countrywide Home Loans, Inc. in the original principal amount of \$248,000.00 (“Note”). The debt described by the Note is secured by a deed of trust (“Deed of Trust”) properly recorded and creating a lien against property commonly described as 2270 Willeo Rill Rd, Marietta, GA 30062 (the “Property”).

1 Creditor is the holder of the Note and thus has standing to enforce the Note pursuant to
2 RCW §62A.3-301. The Deed of Trust was pledged as incident to the Note and thus, as the
3 holder of the Note, Creditor also has the right to enforce the Deed of Trust that follows the note.
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5 Subsequent to the execution of the Note and Deed of Trust, Borrower executed a quit
6 claim deed conveying some interest in the Property to Debtor, who has filed the current petition
7 without the benefit of counsel. It is unclear whether Debtor is organized as a corporation and
8 thus prohibited from filing without counsel.
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10 Upon information and belief, no foreclosure sale date is pending as of the date of this
11 motion.
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13 **B. The Debt**

14 As of September 6, 2019, Debtor is due for the August 1, 2010 payment. The
15 approximate amount owed under the terms of the Note is \$429,149.33. This is an approximation
16 of the lien, including principal balance plus accrued interest, late charges, escrow shortages and
17 other fees and costs, as allowed under the terms of the Deed of Trust. This estimate is accurate
18 as of the date provided to counsel for the Creditor and is intended only for the purposes of this
19 motion. This amount cannot be relied upon for any other purposes, including payoff of the
20 secured debt. A complete, date specific and itemized payoff figure may be obtained from
21 Movant upon written request to counsel for Creditor.
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25 **C. The Value of the Property**

26 The tax assessed value of the Property is \$353,000.00. The Debtor has not filed any
27 schedules as of the date of drafting.
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3 **II. ARGUMENT AND AUTHORITY**

4 **A. Standing**

5 To prosecute a motion for relief from the automatic stay as to enforcement of a note and
6 deed, a movant must establish that it has an interest in the note, either as a holder, or as a party
7 entitled to enforce the note. See *In re Veal*, 450 B.R. 897 (9th Cir. BAP 2011). In the case at bar,
8 the declaration and exhibits supporting the motion establish that Creditor is the holder of the
9 Note and thus has standing to prosecute the present motion.

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11 **B. Basis for Relief from Stay**

12 Under 11 U.S.C. 362(d)(2), on request of a party in interest, the court shall grant relief from
13 stay if there is no equity in the property and the property is not necessary for an effective
14 reorganization. In the case at bar, after consideration of all liens against the Property including
15 the secured lien of Creditor, the Debtor's claimed exemptions against the Property, and the costs
16 of liquidation that would be associated with any sale of the Property, there is no equity for the
17 estate. Because the Debtor has filed for protection under the liquidation provisions of Chapter 7,
18 there is no reorganization and thus the Property cannot be argued as necessary for an effective
19 reorganization.

20 Under 11 U.S. C. 362(d)(1), on request of a party in interest, the court shall grant relief from
21 the stay for cause, including the lack of adequate protection of an interest in such property.
22 Adequate protection is lacking where there is an insufficient equity cushion in the subject
23 property. *In re Mellor*, 734 F.2d 1396 (9th Cir. 1984). In the case at bar, considering the value of
24 the Property against the amount owed to Creditor, there is no equity cushion and thus Creditor
25 lacks adequate protection and the stay should be terminated. Further cause may exist in that it
26 appears the conveyance of an interest in Georgia property to a filing business in Georgia may
27 have been in effort to delay enforcement of the note and deed of trust improperly.

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2 **III. RELIEF REQUESTED**

3 For the reasons stated above, Creditor requests:

- 4 1. An Order Terminating the Automatic Stay.
5 2. Alternatively, for an Order requiring adequate protection of Movant's interest in
6 the Property.
7 3. For such other relief as the Court deems proper.
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10 Dated: September 11, 2019

McCarthy & Holthus, LLP

11
12 /s/ Lance E. Olsen

Lance E. Olsen, Esq. WSBA 25130

13 Michael S. Scott, Esq. WSBA 28501

14 Attorney for Movant
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2 **CERTIFICATE OF SERVICE**

3 On 9/11/2019, I served the foregoing **NOTICE OF MOTION FOR RELIEF FROM THE**
4 **AUTOMATIC STAY; MOTION FOR RELIEF FROM AUTOMATIC STAY; DECLARATION IN**
5 **SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY AND ALL EXHIBITS SUPPORTING**
6 **THE MOTION AND DECLARATION** on the following individuals by electronic means through the Court's ECF
7 program:

8 **TRUSTEE**
9 Mark D Waldron
10 Trustee@orlandini-waldron.com
11

12 **I declare under penalty of perjury under the laws of the United States of America that the foregoing**
13 **is true and correct.**

14 /s/ Salvador Arroyo
15 Salvador Arroyo

16 On 9/11/2019, I served the foregoing **NOTICE OF MOTION FOR RELIEF FROM THE**
17 **AUTOMATIC STAY; MOTION FOR RELIEF FROM AUTOMATIC STAY; DECLARATION IN**
18 **SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY AND ALL EXHIBITS SUPPORTING**
19 **THE MOTION AND DECLARATION** on the following individuals by depositing true copies thereof in the
20 United States mail, enclosed in a sealed envelope, with postage paid, addressed as follows:

21 **DEBTOR**
22 Whispering Pines TR, Whispering Pines TR, Centralia, WA 98531

23 **BORROWER**
24 Sarah Erickson, 2270 Willeo Rill Rd, Marietta, GA 30062
25

26 **I declare under penalty of perjury under the laws of the United States of America that the foregoing**
27 **is true and correct.**

28 /s/ Hue Banh
29 Hue Banh